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Human Rights Council
Thirty-eighth session
18 June-6 July 2018
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the public organization "Public Advocacy", a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-08884(E)
1808884

Please recycle

On the high responsibility of the Holy Synod of Constantinople Patriarchate and His All-Holiness Patriarch Bartholomew by addressing issues related to religious organizations of Ukraine due to probable large-scale violations of human rights.

NGO "Public Advocacy" is a human rights organization in special consultative status with the UN Economic and Social Council, which enables us to promote the protection of human rights at the UN Human Rights Council as well as participate in meetings and conferences held by various international human rights bodies and mechanisms (our name in the ECOSOC database appears as Public Organization "Public Advocacy"). NGO "Public Advocacy" regularly submits human rights reports to the UN, the EU and other designated committees and commissions established by various international structures whose mandate is to protect human rights and ensure stability throughout the world.

We directly represent the interests of Orthodox communities and believers in the courts and law enforcement agencies of Ukraine, supply information on the situation of Orthodoxy in Ukraine to the OSCE and the UN Human Rights Council.

We draw your attention to the fact that since 2015, over 40 temples belonging to the Ukrainian Orthodox Church have been illegally seized; many churches have been subject to arson, whereas believers have been beaten up by representatives of radical organizations and power units of the governmental authorities1.

Unfortunately, despite our appeals to state bodies, they fail to ensure legal protection to believers, let criminals go unpunished, and pursue an outspoken discriminatory policy towards Orthodox believers. Senior civil servants often resort to hate speech in relation to the Ukrainian Orthodox Church, accusing it of aiding Moscow.

According to our observations, based on the evidence and testimonies of eyewitnesses, clerics of the religious organization of the "Kyiv Patriarchate", unrecognized by Ecumenical Orthodoxy, as well as members of radical organizations, who are indirectly or directly supported by the authorities, account in many cases for inciting religious animosity towards Orthodox Christians.

The statements of the President of Ukraine and the decisions of the Parliament, numerous visits of diplomatic delegations of Ukraine to Istanbul, meetings of state officials with the Patriarch of Constantinople allow us to conclude that this issue is no longer an internal matter of the Church. The hierarchy and believers of the Ukrainian Orthodox Church are subjected to the intensified political and administrative pressure aimed at forcing them to accept the SLC project in the format which is considered proper by the presidential political circles.

In particular, the President of Ukraine stressed2 that he is determined to act very decisively towards the creation of the SLC and to oppose all who will stand in the way of "national interests of Ukraine", the website of the President reports. "This is a matter of national security and our defense in a hybrid war, because the Kremlin views the ROC as one of the key instruments of influence on Ukraine," Petro Poroshenko said. "Therefore, I am very determined to act in this matter. And to counteract all those who will stand in the way of Ukraine's national interests and will try to disrupt cooperation with the Ecumenical Patriarchal Throne," he said.

Currently, the mass media are engaged in disseminating the information that the Patriarchate of Constantinople can grant the canonical status to the schismatic organization "Kyiv Patriarchate" or bestow autocephaly in another way.

1www.protiktor.com/38HRCsession

2http://spzh.news/en/news/52924-poroshenko-prigrozil-vsem-kto-popytajetsya-sorvaty-kooperaciju-po-jepc

As a matter of fact, leader of the religious confession of the UOC-Kyiv Patriarchate Filaret Denisenko alongside a number of hierarchs of this faith, without any grounds or evidence, publicly accuse the Ukrainian Orthodox Church of propagating the "Russian world", voicing statements that that the status of the UOC can be changed to "exarchate". Furthermore, the Kyiv Patriarchate openly and publicly declares that the Patriarchate of Constantinople practically promised to grant the canonical status to the Kyiv Patriarchate. In particular, head of the Kyiv Patriarchate Filaret (M. Denisenko) made this statement in the European Parliament on May 2, 2018: "We hope that after receiving the Tomos on autocephaly of the Ukrainian Church there will be one Orthodox Church in Ukraine, and the Moscow Church, if refusing to unite with the Ukrainian Church, will be called an Exarchate of the Russian Church in Ukraine rather than the Ukrainian Church ... As for the Lavra, it will belong to the Ukrainian Church, because it is the Church of Ukraine and it cannot belong to the Russian Church ... Now we can see that Patriarch Bartholomew is resolute and **determined to solemnly proclaim the Tomos of autocephalous status, to recognize our Church, and enter into communion with it**.

In a number of cases, the clerics of this denomination initiate power clashes around the UOC temples and openly demonstrate a negative and hostile attitude towards Orthodox believers. Numerous proofs of such actions are contained both in the information space and reports of human rights organizations. All these facts testify not only to the inter-faith tension in the country, but also to the use of the state administrative resource, which publicly and openly supports aggression against the Ukrainian Orthodox Church.

A marker of aggressively hostile propaganda towards Orthodox believers of the UOC is that personal data of the hierarchs of the Ukrainian Orthodox Church – Chancellor of the UOC Metropolitan Anthony (Pakanich), head of the UOC Representation to European Organizations Bishop Victor (Kotsaba), deputy chairman of the Department for External Church Relations of the UOC Prot. Nikolai Danilevich, and priest AlekseiZoshchuk – were published on Mirotvorets (Peacemaker) site.

As you know, the activity of this site is provocative, as it publishes personal data, the placement of which without the consent of the owner is a criminal offense in accordance with Article 182 of the Criminal Code of Ukraine. Besides, given the nature of the activity of this information resource, publishing personal data of church hierarchs testifies to incitement of religious enmity towards Orthodox believers.

It should be noted that the activities of Metropolitan Anthony (Pakanich) of Borispol and Brovary, Bishop Victor (Kotsaba) of Baryshevka, Protopriest Nikolai Danilevich, as well as priest Aleksei Zoshchuk, are qualified as the work of human rights defenders. ***This fact certainly will not go unnoticed by the international community and the state of Ukraine will have to make efforts to eliminate this offense as quickly as possible; otherwise it will serve as an evident proof of the anti-European and anti-legal policies of the ruling politicians in Ukraine.***

We are deeply convinced that the discussion of the issue regarding, as well as the adoption of any decisions regarding Orthodoxy in Ukraine, is not possible until conflicts around the temples of the Ukrainian Orthodox Church have been put to an end, and those guilty of crimes against Orthodox Christians have been brought to justice. State bodies of the highest level should provide real guarantees of observance of the rights of the UOC believers and confirm through specific actions that Orthodox Christians can enjoy real protection. Unfortunately, this is not the case at the moment, and any wrong conduct or promise given by the Patriarchate of Constantinople or its representatives can step up the activity of radical structures in Ukraine and entail new clashes.

In fact, since the Holy Synod of the Patriarchate of Constantinople made a decision to consider the issue in relation to the Orthodox Church in Ukraine, radical organizations have immediately increased their activity and started preparations for the capture of the UOC shrines, while politicians of different scales have intensified agitation in all directions.

We draw attention of UN HRC to the fact that the legal and spiritual responsibility for probable clashes, human toll and afflictions of believers will be borne by persons whose actions, rash statements or pledges may provoke new conflicts and clashes on religious grounds in the country.

At the same time, taking advantage of the high rostrum of the United Nations, we urge the Holy Synod of the Patriarchate of Constantinople and His All Holiness Patriarch Bartholomew to refrain from any decisions on the establishment of a Single Local Church, autocephaly or taking religious organizations in Ukraine under omophorion, because such decisions will result in clashes on the religious ground and finally undermine the religious peace in Ukraine.

We draw your attention to the fact that any action of the Holy Synod of the Patriarchate of Constantinople, statements of His All Holiness Patriarch Bartholomew on the Ukrainian issue, as well as public demonstration of the consideration of petitions on Ukrainian issues may entail violations of the rights of believers in Ukraine.

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Please recycle

On the seizure and re-arrest of the church building located in the village of Ptycha, Dubno district, Rivne region, Ukraine

Our human rights organization has repeatedly drawn the attention of the OSCE and the UN Human Rights Council to the necessity of restoring the rights of the religious community of the Ukrainian Orthodox Church (UOC) in Ptycha village.

Numerous court rulings confirm that the said religious community is a legal owner of the building of the Holy Virgin Assumption church. At present, the community's ownership right to the church is not contested by anyone.

Since 2015, the adherents of the religious organization of the Kyiv Patriarchate, with the support of some radical organizations, have been recurrently trying to take over the church. For this end, they committed raider seizures, initiated legal actions, and exerted pressure on local authorities, who on their part took various actions to either abolish the community's ownership right to the church or to take hold of it in any other possible way.

For instance, on 17.11.2015, Ptycha village council adopted decision No. 25 to establish the shared use of the church building by the two parties to the conflict. Another decision of the Ptycha village council No. 324 as of 22.03.2017 was, in fact, another attempt to transfer the church to the community of the Kyiv Patriarchate by means of a local referendum, despite the existence of the court ruling confirming the ownership right of the UOC community to temple. The two above-mentioned decisions of Ptycha village council were ultimately canceled after the community of the UOC had filed relevant lawsuits.

It is noteworthy that over the course of 2016-2017 the community of the Kyiv Patriarchate failed to initiate a number of trials to abolish the ownership right of the UOC community to the church building. All their claims were rejected by the court.

As it follows from the foregoing, after the UOC had won the trials, its community was supposed to take the possession of the church and use it without any obstacles, while the local authorities had to facilitate this by every possible means.

Instead, on January 19, 2016, the temple was arrested under article 170 of the Criminal Procedure Code of Ukraine within one of the lawsuits that had been initiated upon the claims of the conflicting parties.

In fact, this article does entitle courts to arrest property, but only in the event, if there is sufficient grounds for the belief that such property **has been an object, means, or an instrument of a criminal violation, or has been evidence of a crime, or has been gained as a result of commission of a criminal violation and/or as proceeds from such**. Even if the church building is considered by the investigative authorities as evidence to be preserved, all the necessary procedural activities could have been accomplished over a two year period. Moreover, since 2016 the investigative authorities should have already taken a decision to either close the criminal proceedings or remit the case to the court. But neither has been done.

Obviously, the church building in view of the circumstances of this case cannot be attributed to any of the categories of property that can be subject to court arrest. Consequently, the arrest was unreasonable and unlawful. This means that the criminal proceedings along with the court ruling to arrest the church building arise from a political decision of local authorities who fail to prevent flagrant violations of the believers' rights of the Ukrainian Orthodox Church.

The community of the UOC, being a law-abiding legal person, has used its right to challenge the arrest, and since 2016 has filed motions to revoke property arrest with a view to renewing the performance of divine services in the temple.

On April 2, 2018, the court ordered to revoke the arrest. However, on the same day the church building was violently seized by unknown armed persons. The police officers, who arrived at the scene of the crime, protected the seized building preventing the legitimate owner, the UOC community, from entering the territory and the church itself, without taking any action to detain the real offenders.

On April 3, 2018, the temple was arrested again on the basis of the appeal of the law enforcement authorities in a new criminal proceeding.

Simultaneously with the new arrest, the authorities, led by the head of Dubno State Administration, head of the village council, began to coerce the owner of the temple – the UOC community – to transfer the building to the Kyiv Patriarchate for no legal reasons. Arguments that the only legitimate owner of the building, as confirmed by numerous court decisions, is the religious community of the Ukrainian Orthodox Church in Ptycha village are disregarded by civil servants.

For the pressure on the faithful, talks were held in the presence of the chief of the police service and the head of the state administration. A. Yurash, head of the Department for Religion of the Ministry of Culture of Ukraine, also took part in the session. All these civil servants exerted unprecedented unlawful pressure on the believers of the UOC and demanded that the building of the church be transferred to the Kyiv Patriarchate, despite numerous court decisions that came into force in favor of the UOC community. Ignoring the law and justice by civil servants has taken on a blatant form, as they formalized their demands towards the UOC community on an official letterhead of the state body – the village council of Ptycha village.

In support of their demands, apart from political motives, the civil servants referred to scandalous bills No. 4128, 4511, 5309, which our organization had reported to the Human Rights Council at the 37th and the present session. Such actions also indicate that if these bills are adopted, human rights violations and attempts to take away the property of the UOC, as in the case of the community of Ptycha village, will become a mass phenomenon in Ukraine.

All these facts testify not only to the fact that law enforcement officials have committed gross violations of the legislation of Ukraine as well as the norms of international law, but also to the fact that government authorities are reluctant to defend human rights when it comes to believers of the Ukrainian Orthodox Church.

Please follow the link below for more information: www.protiv'or.com/ptichacase

In accordance with the special procedure of the Human Rights Council, we sent a complaint on this matter due to the fact that the community of Ptycha village, Rivne region, has exhausted all available domestic remedies.

We urge the UN HRC to examine the case of Ptycha village, Rivne region, in an accelerated manner in view of its significance for the religious peace in Ukraine.

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Please recycle

Discrimination and religion-based violations against the Orthodox Ohrid Archbishopric in the Former Yugoslav Republic of Macedonia (FYROM)

The **Orthodox Ohrid Archbishopric (OOA)** is an autonomous Orthodox Archbishopric located on the territory of the Republic of Macedonia. It is the only canonical Orthodox Church in the Republic of Macedonia and is in full communion with all other Local Orthodox Churches.

Historical Background

With a view to regaining its canonicity and be recognized by other Orthodox churches, the Macedonian Orthodox Church started negotiations with the Serbian Orthodox Church. As a result, an agreement was signed in Niš in 20021. Although the agreement was signed by all the bishops of the two parties to negotiations, the representatives of the Macedonian Orthodox Church became subject to severe criticism, eventually leading to the rejection of the agreement by the Synod of the MOC.

After that, all bishops, clergy, monastics and faithful people were summoned by the Patriarch of the Serbian Orthodox Church to restore liturgical and canonical unity. The positive response came from Metropolitan of Veles and Povardarie Jovan (Vraniskovski) together with the priests of Veles who agreed to sign a document of agreement2.

In that same year, the Assembly of the Serbian Orthodox Church appointed Metropolitan Jovan Exarch of all the territories of the Ohrid Archdiocese and in 2003 was elected Chairman of the Holy Synod of Bishops of the Orthodox Ohrid Archbishopric3.

In 2005, Serbian Patriarch confirmed Metropolitan Jovan to be *Archbishop of Ohrid and Metropolitan of Skopje* in accordance with the Niš Agreement4. On the same day, the Patriarchal and the Assembly's Tomos for Autonomy of the Ohrid Archbishopric was granted5.

Rejection of registration by the Government of Macedonia

The Macedonian State Religion Commission has been continuously refusing registration of the Orthodox Ohrid Archbishopric on the basis that each confession may be registered as one group and that the name of the OOA was not distinct from that of the Macedonian Orthodox Church (MOC)6. Although MOC is recognized by the Government of Macedonia, it is not recognized by any other Local Orthodox churches, considering the 1967 declaration of the MOC of autocephaly to be a breach of canon law.

Arrest and Expulsion

In 2002, after canonical and ecclesiastical reunion with the Serbian Orthodox Church, police unlawfully, without a court ruling, expelled Archbishop Jovan from his residence and cathedra in Veles. In 2004, the same illegal actions were committed by the police in terms of the monks of four monasteries, who were immediately expelled from their monasteries after joining the Orthodox Ohrid Archbishopric78.

1 http://poa-info.org/history/schism/nisdok.html
2 http://poa-info.org/history/schism/potpisi_svest_velest.html
3 http://www.poa-info.org/sinod/odluki/20031225.html
4 http://www.poa-info.org/en/archbishop/decisions/confirmation.pdf
5 http://www.poa-info.org/archbishop/decisions/tomos.html
6 https://www.state.gov/j/drl/rls/irf/2006/71394.htm
7 http://forum18.org/archive.php?article_id=228

In 2005 Archbishop Jovan was sentenced to 18 months' imprisonment for *Instigation of ethnic, racial and religious hatred, discord and intolerance*. The verdict states that Archbishop9:

1. slandered the Macedonian Orthodox Church;
2. accepted his appointed as an Exarch of the Ohrid Archbishopric in Macedonia and participated in the ordination of the bishops Joakim (Jovčevski) and Marko (Kimev) and
3. officiated at a religious service in an apartment owned by his parents.

After 220 days in prison, the Supreme Court found the last two of the three points to be unconstitutional and the sentence was shortened to 8 months 10. In 2006, for the second time, Archbishop Jovan was sentenced on charges for embezzlement and was sentenced to a higher prison term of 2 years. After 256 days in prison, he was released11.

Harassment and arsons

The same year, some armed men, looking for Archbishop Joval, illegally broke into Saint John Chrysostom monastery in the village Nižepole. Having failed to find him there, the armed men started harassing and uttering threats to the nuns, cutting their hair and setting the monastery on fire12. The buildings of the Orthodox Ohrid Archbishopric were raided by the police13 14, the church in the *Saint John Chrysostom* monastery was demolished by the state authorities15, the chapel *St. Nectarios of Aegina* was vandalized and then completely demolished as well with the serving priest, father Borjan Vitanov, who was beaten up twice16 .

In 2004, Macedonian Parliament adopted "the Declaration for support of the autocephaly of the MOC" thus legalizing the Government's identification with a specific religious community – the Macedonian Orthodox Church1718. There were also case when canonical Orthodox clergy were not allowed to enter the country 19 20.

International community reaction

"Religious Freedom Report" and "Human Rights Report" of the United States Department of State repeatedly reported evidence of "restrictions of the religious freedoms of the members of the Orthodox Ohrid Archbishopric", existence of "religious prisoners, violation of freedom of movement, police terror and demolition of a monastery, prevention of OSCE from obtaining a copy of the decision upon which the demolition was carried out, police interrogations of the members of the Orthodox Ohrid Archbishopric"21 *22 23 24* etc .

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8 https://web.archive.org/web/20110722215706/http://mhc.org.mk/default-en.asp?ItemID=996B88AD8CF81C4280D853A6695673E4&arc=1
9 http://www.poa-info.org/archbishop/testimonies/verdict_racial_hatred.html
10 http://www.poa-info.org/archbishop/testimonies/verdict_supreme_court.html
11 http://www.poa-info.org/archbishop/testimonies/9_third_verdict_convicting.html
12 http://forum18.org/archive.php?article_id=259
13 http://forum18.org/archive.php?article_id=506
14 https://www.state.gov/j/drl/rls/irf/2006/71394.htm
15 https://www.state.gov/j/drl/rls/irf/2006/71394.htm
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17 https://web.archive.org/web/20110725133708/http://www.a1.com.mk/vesti/default.aspx?VestID=28339
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20https://web.archive.org/web/20141006101048/http://star.dnevnik.com.mk/default.aspx?pbroj=2564&stID=40267&pdate=20040922
21 https://www.state.gov/j/drl/rls/irf/2006/71394.htm
22 https://www.state.gov/j/drl/rls/irf/2004/35470.htm
23 https://www.state.gov/j/drl/rls/irf/2008/108458.htm
24 https://www.state.gov/j/drl/rls/irf/2004/35470.htm

The US Mission to the Organization for Security and Cooperation in Europe stated that "Violation of freedom of religion and encouraged the authorities to apply the law fairly, advising the government should avoid involving in religious disputes, reminding that Article Nine of the European Convention on Human Rights and Article 19 of the Macedonian Constitution as well as Macedonia's OSCE commitments, and international norms, all guarantee his right to freedom of religion"25.

The European Commission reported "cases of violations of religious freedom exist" and emphasized that "the new law should provide more liberal procedure for registering religious communities"26 .

Amnesty International called Archbishop Jovan "a Prisoner of conscience" 27.

Freedom House reported that Archbishop Jovan was "arrested ... for his ties to the Serbian Orthodox Church" and that "Macedonia received a downward trend arrow due to ... an increase in the harassment of leaders of various religious groups" 28 29.

Letters were sent to the Government with a request to release Archbishop Jovan from Ecumenical Patriarch Bartholomew, Patriarch Alexy II of Moscow, Holy Synod Of Hierarchs Of The Church of Greece, The Holy Community of the Mount Athos, The Standing Conference of the Canonical Orthodox Bishops in the Americas, Metropolitan Herman of the Orthodox Church in America30 31 32 33 34 35

Latest developments

According to "MACEDONIA 2016 INTERNATIONAL RELIGIOUS FREEDOM REPORT":

"Religious groups reported government favoritism toward the Macedonian Orthodox Church – Ohrid Archbishopric (MOC-OA). The retrial of a money laundering case involving the head of the Orthodox Archbishopric of Ohrid (OAO) started in January but was postponed twice. The OAO, which was unable to register as a religious entity, said the government was discriminating against it

The state recognizes the five religious groups specifically cited in the constitution: the Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, and the Jewish Community. The law allows other religious organizations to obtain the same legal rights and status as these five groups by applying for government recognition and registration through the courts. The constitution states the five named religious groups "and other religious communities and groups" are separate from the state, equal before the law, and free to establish schools, charities, and other social institutions.

25 https://web.archive.org/web/20111001012559/http://osce.usmission.gov/media/pdfs/2004-statements/fyrom_2-5-04.pdf
26 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2006/nov/fyrom_sec_1387_en.pdf
27https://web.archive.org/web/20141006082100/http://amnesty.org/en/library/asset/EUR05/001/2006/en/28018728-d44a-11dd-8743-d305bea2b2c7/eur050012006en.html
28 https://freedomhouse.org/report/freedom-world/freedom-world-2007?page=363&year=2007&country=7220
29 https://freedomhouse.org/report/freedom-world/freedom-world-2005?page=363&year=2005&country=6780
30 http://www.ec-patr.org/docdisplay.php?lang=gr&id=549&tla=en
31 http://www.patriarchia.ru/db/text/37153.html
32 http://www.ecclesia.gr/epikairotita/
33 http://www.poa-info.org/archbishop/correspondence/atos19022004.html
34 https://web.archive.org/web/20100205220127/http://www.scoba.us/articles/2005-08-11-condemns-jovan-release.html
35 https://oca.org/news/archived/metropolitan-herman-calls-for-release-of-archbishop-jovan-of-ohrid

Additionally, the ICM, one of the five officially recognized religious groups in the constitution, stated the government favored the MOC-OA by granting it unique privileges, such as providing it with public properties free of charge, funding for the construction of new Orthodox churches, and exclusive invitations for its representatives to attend government functions. The MOC-OA denied any affiliation with the government and stated it did not involve itself in politics."36.

In 2017, the European Court for Human Rights announced its verdict on the case nr. 3532/07: "Orthodox Ohrid Archbishopric against the Former Yugoslav Republic of Macedonia (FYROM)":

"FYROM violated Art. 11 (freedom of assembly and association), in conjunction with Art. 9 (Freedom of Thought, Conscience and Religion), the European Convention on Human Rights ", as the authorities refused to register the Orthodox Ohrid Archbishopric (POA) as a special religious community37.

In 2018, the Government of Macedonia filed a complaint before the Grand Chamber of the European Court for Human Rights, in relation to the said verdict. However, the complaint was rejected by the Court, thus confirming once more its verdict on the case, stating that the FYROM violated the precepts of the European Convention on Human Rights by rejecting to properly register the Orthodox Ohrid Archbishopric38.

Conclusion

We draw the attention of the UN HRC to the fact that interference by states in the sphere of freedom of religious beliefs, as well as administrative and political favouritism in term of one one denomination, as is the case in the FYROM and Ukraine, leads to massive violations of the rights of believers and destroys democratic societies.

In this regard, we ask the UN HRC and the international community to take measures to protect the rights of believers of the Orthodox Ohrid Archbishopric and ensure the full scope of its rights.

36 https://www.state.gov/documents/organization/269084.pdf
37 http://www.poa-info.org/synod/announcements/20171117.html
38 http://www.poa-info.org/news/2018/04/20180424.html

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Please recycle

The illegal occupation of Western Sahara and the violation of the rights of Sahrawi prisoners*

Background

Western Sahara was under Spanish colonial rule from 1884. In December 1963, the General Assembly[1] added the Territory to the list of the Ad-Hoc Committee on the Situation in the Non-Self-Governing Territories concerning the implementation of the Declaration on the Granting of Independence to colonial countries and peoples.

We would recall the Council that the principles of equal rights and self-determination of peoples adopted by the UN General Assembly[2] affirm that "Every State has the duty to refrain from any forcible action which deprives peoples [...] in the elaboration of the present principle of their right to self-determination and freedom and independence." It further stresses that "The Territory of a colony or other Non Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or non Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles."[3]

In October 1975, the International Court of Justice, responding to a request for an advisory opinion from the General Assembly, determined that " The inferences to be drawn from the information before the Court concerning internal acts of Moroccan sovereignty and from that concerning international acts are in accord in not providing indications of the existence,..., of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State."[4]
On 6 November 1975, the Kingdom of Morocco invaded Western Sahara militarily and organized a transfer of thousands of Moroccans into the Non-Self-Governing Territory (Green March). The same day, the UN Security Council adopted resolution 380, deploring the holding of the march and calling upon Morocco to immediately withdraw from the Territory of Western Sahara all of the participants to the march.

The illegal occupation of Western Sahara

In his latest report to the General Assembly[5], the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Mr. Michael Lynk, analyzed the occupation of the Palestinian territory through the prism of four general principles of international law. He came to the conclusion that the said occupation is illegal.
Although the historical and geopolitical background is not the same, the four principles apply to the occupation of Western Sahara by the Kingdom of Morocco.
The Special Rapporteur rightly underscored that "Colonialism, occupation and other forms of alien rule are very much the exception and they can only be justified in law and international practice as a short-term and abnormal condition that is leading unhesitatingly towards self-determination and/or sovereignty."
The first principle of modern international law evoked by the Special Rapporteur establishes that an occupier cannot conquer, annex or gain any legal or sovereign title over any part of the territory under its occupation.
As mentioned above, the International Court of Justice already established that there were no indications of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State.

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[1] UNGA Resolution 1956 (XVIII)

[2] UNGA resolution 2625 (XXV) adopting the Declaration of Principles of International Law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

[3] It is, *inter alia*, based on this very Principle that the European Union Court of Justice established that the Association and Liberalization agreement between the EU and the Kingdom of Morocco, as well as the Partnership Agreement between the EU and the Kingdom of Morocco in the fisheries sector were not applicable to Western Sahara.

[4] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p.12

[5] A/72/556 (23.10.2017)

Nevertheless, the Kingdom of Morocco, not only continues to encourage Moroccan civilian population transfer to Western Sahara, thus violating article 49 of the Fourth Geneva Convention, but it has also adopted decrees[6] which establishes the administrative territorial division of the Kingdom that includes the Occupied Territory of Western Sahara. This, of course, is clearly an illegal annexation.

The second well-established principle requires that the occupation must be temporary and cannot be either permanent or indefinite. The Moroccan longstanding posture in the negotiations, as well as in the annual King Mohamed VI's speeches celebrating the invasion March of 1975, shows that Morocco has no intention to end its occupation.

The third principle of international law establishes that during the occupation, the occupier has to act in the best interests of the people under occupation. The systematic plundering of the natural resources in Western Sahara by the Kingdom of Morocco, without the free, prior and informed consent of the internationally recognized representative of the people of Western Sahara[7], as well as the serious and persistent violations of the Geneva Conventions and the systematic character of the Human Rights' violations, including of the right to development, committed by the Occupying Power, illustrate that the Moroccan authorities have never taken in due account the interests of the people under occupation.

The fourth principle affirms that the occupier must administer the occupied territory in good faith. Indeed, the principle of good faith is a cardinal rule of treaty interpretation. The intention to apply the treaties with the European Union to the Territory of Western Sahara, as well as the recent actions of the Kingdom of Morocco against the Sahrawi Arab Democratic Republic in the framework of the African Union, questions the good faith of the Kingdom of Morocco's interpretation of international treaties in the case of Western Sahara.

The continuous breaches of these four principles of international law regarding the Occupying Power, the Kingdom of Morocco, demonstrate the real illegality of the occupation of Western Sahara.

The violations of the rights of Sahrawi prisoners

Since the Kingdom Morocco invaded and continues to illegally occupy the Non Self-Governing Territory of Western Sahara with a heavy military presence and further considering the declaration deposited on 23 June 2015 by the Polisario Front in conformity with art. 96.3 of Additional Protocol I, International Humanitarian Law fully applies to Western Sahara.

Consequently, the Sahrawi people originating from the Non Self-Governing Territory have to be considered as "protected persons", in accordance with article 4 of the Fourth Geneva Convention.

In this context, the imprisonment of Sahrawis by the Occupying Power outside Western Sahara contravenes the provisions of article 76 of the Fourth Geneva Convention, which provides that "Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein…".

In the framework of the Gdeim Izik events in 2010, the violent dismantlement by the Moroccan authorities of the pacific protest's camp set in the desert by the Sahrawi people and the subsequent arrest of the leaders of the camp, the Occupying Power has clearly violated International Humanitarian Law.

Presently, 17 Saharawis sentenced from 20 years to life imprisonment are still held in detention centers outside Western Sahara, hundreds of kilometres away from their families, difficulting visits. Some prisoners are deprived of their needed medical care.

It is to be noted that, on 15th November 2016, following a complaint lodged by one of the detainees (Mr. Ennaâma Asfari), the UN Committee Against Torture[8] founded that the facts before it revealed a violation by the Kingdom of Morocco of articles 1, 12, 13, 14, 15 and 16. In other words, the Committee founded that Ennaâma Asfari was a victim of torture for which the Moroccan authorities did not want to conduct an independent investigation.

In its conclusions, the Committee called on the Kingdom of Morocco to compensate the applicant adequately and fairly, to initiate an impartial and thorough investigation into the events in question, to refrain from any act of pressure, intimidation or retaliation that could harm the physical and moral integrity of the complainant, and his family and to allow the complainant to receive visits from the family to prison. The Kingdom of Morocco has rejected the decision of the Committee.

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[6] The last one on 20 February 2015 (no. 2-15-40)

[7] UNGA res. 34/37 (21.11.1979) recognizes the Polisario Front as the representative of the people of Western Sahara

[8] CAT/C/59/D/606/2014 (published on 12 Dec. 2016)

Mrs. Claude Mangin, a French national, spouse of Ennaâma Asfari, saw him for the last time in June 2016; since then, she has been turned back four times upon arrival at the airport in Morocco, despite having informed the Moroccan authorities of her visit.
On 17th May, Mrs. Claude Mangin has suspended the hunger strike she started on 18th April in Ivry s/Seine (France), calling upon Moroccan authorities to let her visit regularly her husband, Mr. Ennaâma Asfari.

Recommendations

The undersigned organizations call on:

- all High Contracting Parties to ensure that the Kingdom of Morocco respects the Fourth Geneva Convention in Western Sahara;
- the Kingdom of Morocco to fully respect the Fourth Geneva Convention in Western Sahara;
- the Kingdom of Morocco to fully respect the Human Rights of the Sahrawi people, including their right to self-determination and independence, in conformity with UNGA resolution 1514 (XV);
- the Kingdom of Morocco to fully respect the Principles of International Law, including the Principle of equal rights and self-determination of peoples and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;
- the members of the Human Rights Council to create the mandate of Special Rapporteur on the Human Rights violations in the Occupied Territory of Western Sahara.

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Humanos (CODESA), Colectivo Saharaui en Estepona, Colectivo Saharaui en Gipuzkoa, Colectivo Saharaui en Jaén, Colectivo Saharaui en Lanzarote, Comisión Ecuménica de Derechos Humanos de Ecuador, Comisión General Justicia y Paz Comisión Media Independientes, Comisión Nacional de los Derechos Humanos de la República Dominicana (CNDH-RD), Comisión Nacional Saharaui por los Derechos Humanos (CONASADH), Comité d'Action et de Réflexion pour l'Avenir du Sahara Occidental, Comité de Apoyo por el Plano de Paz y la Protección de los Recursos Naturales en el Sáhara Occidental, Comité de Defensa del Derecho de Autodeterminación (CODAPSO), Comité de Familiares de los 15 Jóvenes Secuestrados, Comité de Familiares de Mártires y Desaparecidos, Comité de Familiares de los Presos Políticos Saharauis, Comité de Protección de los Defensores Saharauis – Freedom Sun, Comité de Protección de los Recursos Naturales, Comité Saharaui de Defensa de Derechos Humanos en Glaimim, Comité Saharaui de Defensa de Derechos Humanos en Smara, Comité Saharaui de Defensa de Derechos Humanos (Zag), Comité Saharaui por el Monitereo de los Derechos Humanos (Assa), Comité de Solidaridad Oscar Romero, Comité Suisse de soutien au Peuple Sahraoui, Comité de Victimas de Agdaz y Magouna, Comunidad Saharaui en Aragón, Comunidad Saharaui en Castilla y León, Comunidad Saharaui en Castilla la Mancha, Comunidad Saharaui en Catalunya, Comunidad Saharaui en Grenada, Comunidad Saharaui en Las Palmas, Comunidad Saharaui en Murcia, Coordinadora Estatal de Asociaciones Solidarias con el Sáhara (CEAS – Sáhara), Coordinadora de Gdeim Izik para un Movimiento Pacífico, Coordinadora de los Graduados Saharauis Desempleados, Coordinadora d´Organizacións No-Governamentals de Cooperació al Desenvolupament (CONGDIB), Coordinadora de las ONGs en Aaiún, Coordinadora Saharaui de Derechos Humanos de Tantan, DISABI Bizkaia, Equipe Média, Federació ACAPS de Catalunya, Federació d'Associacions de Solidaritat amb el Poble Sahraui del País Valencià, Federación Andaluza de Asociaciones Solidarias con el Sahara – FANDAS, Federación de Asociaciones de Amigos del Pueblo Saharaui de Extremadura – FEDESAEX, Federación de la Comunidad de Madrid de Asociaciones Solidarias con el Sahara - FEMAS Sahara, Federación Estatal de Instituciones Solidarias con el Pueblo Saharaui – FEDISSAH, Forum Futuro de la Mujer Saharaui, Fundación Mundubat, Fundación Sahara occidental, Giuristi Democratici, Groupe Non Violence Active (NOVA SAHARA OCCIDENTAL), Grupo por la renuncia de la Nacionalidad Marroquí, Ibsar Al Khair Association for the Disabled in Western Sahara, Liga de Defensa de los Presos Políticos Saharaui, Liga de Deportistas Saharauis en España, Liga de Estudiantes Saharauis en España, Liga de Periodistas Saharauis en España, Liga Saharaui de defensa de Derechos Humanos y Protección de RW-Bojador, Ligue des Jeunes et des Etudiants Sahrauois en France, National Television Team, Observatorio Aragonés para el Sáhara Occidental, Observatorio Asturiano de Derechos Humanos para el Sáhara Occidental – OAPSO, Observatorio Saharaui por el Niño y la Mujer, Observatorio Saharaui de Protección del Niño, Observatorio Saharaui de Recursos Naturales, Organización Contra la Tortura en Dakhla, Organización Saharaui por la Defensa de las libertades y la dignidad, Pallasos en Rebeldía y Festiclown, Por un Sahara Libre, Sahara Euskadi Vitoria, Sahara Gasteiz Vitoria, Saharawi Association for Persons with Disabilities in Western Sahara, Saharawi Association in the USA (SAUSA), Saharawi Campaign against the Plunder (SCAP), Saharawi Center for Media and Communication, Saharawi Media Team, Sindacato Español Comisiones Obrearas (CCOO), Solidariedade Galega col Pobo Saharaui (SOGAPS), Tayuch Amurio, Tawasol Lludio, Unión de Asociaciones Solidarias con el Sáhara de Castilla y León, Union des Ingénieurs Sahraouis, Unión de Juristas Saharauis (UJS) Unión Nacional de Abogados Saharauis Unión Nacional de Mujeres Saharauis (UNMS) Unión Nacional de la Juventud de Saguia El Hamra y Rio de Oro (UJSARIO), Unión Nacional de Estudiantes de Saguia El Hamra y Rio de Oro (UESARIO), Unión Nacional de Trabajadores de Saguia El Hamra y Rio de Oro (UGTSARIO), Unión de Periodistas y Escritores Saharauis (UPES), US Western Sahara Foundation, VZW de Vereniging van de Sahrawi Gemeenschap in Belgie, Western Sahara Resource Watch España (WSRW España), Western Sahara Times, NGOs without consultative status, also share the views expressed in this statement.

United Nations A/HRC/38/NGO/25

General Assembly

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Human Rights Council
Thirty-eighth session
18 June- 6 July 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Graduate Women International (GWI), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Graduate Women International Recognises Secondary School as a Means to Eliminate Child Marriage

Graduate Women International (GWI) recalls the Human Rights Council (HRC) resolution 32/20 (2016), *Realizing the equal enjoyment of the right to education by every girl*, that recognises education as a multiplier right that empowers women and girls to make choices to claim their human rights, including the right to education. Child marriage is a reality for more than 12 million girls each year with estimates indicating that, if current trends continue, more than 150 million girls worldwide will be married by 2030.[1] GWI, concerned that child marriage contributes to the multiple and intersecting obstacles that limit girls' access to education, upholds that child marriage disrupts a girl's life trajectory, decreases her opportunity for economic independence and destroys her right to self-determination.

Education is one of the greatest losses incurred by child marriage and one of its most promising recourses. Current developments in the reduction of child marriage are encouraging but GWI reiterates the critical importance of girls' completing secondary school. We suggest that primary schooling is not sufficient to counter the effects or discourage the practice of child marriage. The World Bank forecasts that for each year of secondary school completed a girl reduces her likelihood of marrying before the age of eighteen by 5% or more in many countries.[2] As advocates for the advancement of the status of girls, GWI promotes education that builds a stable foundation that leads to an alternative to early marriage. Ending child marriage through access to secondary education must be brought to the forefront of States' policies as a means to fortify girls' futures. We call on States to address the lingering dissonance between policy and action on girls' education as a means to end child marriage. In addition to government's oversight of the implementation of policies, GWI also recognises the significance of a bottom-up approach whereby grassroots leaders and communities together make a commitment to eliminate child marriage through education.

The World Bank estimates that child marriage will cost developing countries trillions of dollars by 2030; for example, early marriage reduces women's earnings in adulthood by nine percent[3]. Endling child marriage will improve States' economies. Child brides are more likely to drop out of school than their peers who marry later. This, in turn, greatly impacts their ability to contribute developmentally as well as financially to their lives, the lives of their children and their community. As alluded to above, girls who complete secondary education are up to six times less likely to marry young compared to girls with little to no education[4]. GWI emphasizes that education increases a woman's expected earnings and the welfare of her household. GWI appeals to States to embrace the fact that ending child marriage is not only just but will increase a woman's expected earnings in the labour market. Child marriage not only affects a girl's opportunity to contribute to her country's economy but also challenges her right to autonomy.

Child marriage robs girls of their autonomy before it is even legally granted to them. Early marriage deprives girls of the opportunity to choose their partners which leads to life -long consequences for their physical, mental and emotional health as well as the potential for harm to their children. Child marriage undermines self-determination. GWI emphasises the urgency of this situation and highlights the role education can play in improving girls' independence and freedom of choice.

As part of the United Nations Sustainable Development Goals, which went into effect in January 2016, countries around the world agreed to a target of ending all child marriage by 2030. GWI is optimistic about States beginning to recognise

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1 "Child Marriage Is a Violation of Human Rights but Is All Too Common." *UNICEF DATA*, data.unicef.org/topic/child-protection/child-marriage/.

2 "Educating Girls, Ending Child Marriage". http://www.worldbank.org/en/news/immersive-story/2017/08/22/educating-girls-ending-child-marriage

3 Education for Global Development, a blog about the power of investing in people. https://blogs.worldbank.org/education/psd/rippling-economic-impacts-child-marriage

4 Brookings Institute: Today's Challenges for Girls Education.

the value of collaborating with non-government organisations (NGOs) and other non-State stakeholders whose expertise in child marriage is an untapped resource that can contribute to achieving the 2030 Agenda.

As example, GWI is encouraged that the President of Niger has stated that child marriage will no longer be tolerated in Niger where the legal age of marriage for girls is currently 15. This announcement has the potential to change the lives of millions of girls. We are also encouraged about changing norms in India where villages, one-by-one, are pledging to become child- marriage free. Through a travelling music and puppet show community leaders, parents and children are made aware of the harmful effects of child marriage in a way that people of all ages can understand. After the show, villagers take an oath that they will keep their village child marriage free, then they sign a banner which is then put up in the village to hold everyone accountable. The campaign to make villages child -marriage free has reached almost 200 villages in the Thar desert and more than 49 villages are currently free of child marriage.[5] Additionally, GWI calls attention to Japan's Civil Code that will set the minimum age of marriage at 18 for both women and men. If passed, the law, which the government supports, would take effect in 2022[6]. In Switzerland, both chambers have voted to increase jail sentences to a maximum of five years for people found guilty of coercing others into a marriage. The law is to apply regardless of whether the marriage was agreed to outside Switzerland[7]. Each of these examples demonstrate the political will necessary for States to meet Sustainable Development Goal 5.3 to end child marriage.

Child marriage puts the education of women and girls at great risk, yet education is the best defense against the perpetuation of the practice itself. GWI recommends the Council to:

- Urge and support States to conduct comprehensive awareness raising programmes in collaboration with NGOs and all sectors of society including the civil society organisations, media, parents, caregivers, religious leader and community elders including those with specific responsibilities towards children on the life-restricting aspects of child and forced marriage.
- Develop a National Action Plan specifically to eliminate child marriage that includes employing additional female teachers.
- Remind States of their commitments made by adopting, in December 2016, the second resolution on child, early and forced marriage and of their obligations to all Universal Human Rights Instruments[8].
- Urge States to include an update on their progress towards ending child marriage in their national reports to international treaty bodies and in the universal periodic review.
- Strongly encourage States to enact and strictly enforce laws to ensure that marriage is entered into only with the free and full consent of each partner and to raise the minimum legal age of consent to 18 years.
- Engage Parliamentarians who are key players in ending child marriage, as they can lead the development of relevant legislation and policies, set the political agenda as opinion leaders on ending child marriage, pass budgets, monitor implementation, and ensure accountability for both national and international commitments, including government accountability.
- Create programs related to the achievement of SDG 5.3.
- Institute adequate safeguards to ensure that parental consent or other exceptions (including a consequence of rape) are not used to force girls into marriage.
- Ensure that registration of application for marriages is strictly enforced.

- Provide support and assistance for victims of child and forced marriages to obtain medical, psychological and other assistance including educational opportunities.

5 Girls Not Brides. https://www.girlsnotbrides.org/villages-india-going-child-marriage-free/

6 Human Rights Watch. https://www.hrw.org/news/2018/03/21/japan-moves-end-child-marriage

7 Swiss Info. https://www.hrw.org/news/2018/03/21/japan-moves-end-child-marriage

8 Office of the High Commissioner for Human Rights. http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx